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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO. 674

JOHN THOMAS, WILLIAM McCOY, JOHN SALTERS, ISAAC SIZEMORE, RAY TRANTHAM, ELLIS COLEMAN, JR., LEE LOONEY, JOHN YATES, and CHARLES TAYLOR, Petitioners

vs:

CONSOLIDATION COAL COMPANY, a corporation, (POCAHONTAS FUEL COMPANY DIVISION) and THE INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, an unincorporated association, (DISTRICT 29), and LOCAL UNION NO. 9690, UNITED MINE WORKERS OF AMERICA, an unincorporated association, Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CONSOLIDATION COAL COMPANY, A CORPORATION

HARRY G. CAMPER, JR.
Attorney for Respondent

BAILEY, WORRELL,
CAMPER & VIERS
Attorneys at Law
First National Bank Building
Welch, West Virginia

JOHN W. GILLESPIE
Attorney at Law
Tazewell, Virginia

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit decided on May 15, 1967, is reported in 380 F.(2d)69, and is printed as Appendix A beginning on page App. 15 in the Petition. The order of the Circuit

Court of Appeals upon application for rehearing is printed in the Petition as Appendix B, page App. 41.

The opinion of the District Court for the Southern District of West Virginia, so this respondent is informed, was not published and the petitioners did not print the District Court's memorandum opinion or its order in the appendix to their petition, citing as the reason therefor that the same were not pertinent to the issue.

The final order of judgment of the Circuit Court of Wyoming County, West Virginia, entered March 8, 1965, is printed in the Petition in Appendix C thereto at page App. 42. The Circuit Court of Wyoming County did not write or file an opinion.

The order of the Supreme Court of Appeals of West Virginia entered on May 24, 1965, denying the petitioners' petition for an appeal from the judgment of the Circuit Court of Wyoming County, West Virginia, is printed in Appendix A hereto, infra, page App. 1.

JURISDICTION

The jurisdictional grounds are adequately set forth in the petition. The decision of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was decided on May 15, 1967, and application for rehearing was denied by said Court on July 6, 1967.

COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Circuit Court of Appeals for the Fourth Circuit err, after reviewing all grounds of dismissal raised by respondents in the State Court, in holding that dismissal by the State Court of petitioners' complaint was a judgment on the merits and therefore the petitioners are barred in this action against the respondents herein, under the doctrine of *res judicata*?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

These are stated in the Petition.

COUNTERSTATEMENT OF THE CASE

The issue before the Court involves the doctrine of *res judicata*. Therefore, the facts are all important and essential. Since the "Statement of the Case" in the petition fails to state in chronological order the material facts, omits certain pertinent facts and contains erroneous factual conclusions, it is deemed advisable to set out here *in chronological order* the material facts pertinent to decision of the issue involved. It is important to note, as did the Circuit Court of Appeals in its opinion (P. App. A, page App. 17, 18),[1] that there is no dispute concerning the facts relevant to the issue of *res judicata*.

I. WITH REFERENCE TO PETITIONERS' PRIOR ACTION IN THE STATE COURT

On February 21, 1964, and prior to the institution of the instant action, the same nine petitioners herein, former employees of respondent Consolidation Coal Company, instituted an action in the Circuit Court of Wyoming County, West Virginia,[2] against the same respondents herein, namely, Consolidation Coal Company, a corporation,[3] and the International Union, United Mine Workers of America, an unincorporated association, (District 29) and Local Union No. 9690, United Mine Workers of America, an unincorporated association.[4] As in this case, both the original complaint and

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[1] Note: "P.App." refers to the Appendix in Petitioners' petition; "C.App." refers to the Appendix in this brief of respondent company. Respondents herein were defendants in State Court.

[2] Hereinafter referred to as the "State Court."

[3] Hereinafter referred to as the "Company."

[4] Hereinafter referred to as the "Unions."

the amended complaint later filed in the State Court alleged petitioners were wrongfully discharged from their employment by the Company and that the decision of the umpire arbitrating the dispute in connection with their discharges pursuant to the grievance procedures of a collective bargaining agreement was fraudulently obtained by a conspiracy between the Company and the Union. Both complaints filed in the State Court, as well as the complaint filed in the District Court below and the proposed amended complaint there tendered, contain substantially the same factual allegations to support their cause of action. Also, in the State Court, as here, the petitioners sought to set aside and vacate the decision of the umpire affirming their discharge reached at the final stage of the grievance procedure provided for in the bargaining agreement and judgment for compensatory and punitive damages against the Company.

The Company filed its answer in the State Court, with exhibits attached, including a copy of the umpire's decision confirming discharge of the petitioners and denying the grievances of the Union in their behalf. A motion to dismiss and a motion for summary judgment were also filed by the Company. Unions filed motions to dismiss the original complaint as to them on the ground that as unincorporated associations they could not be sued as such by name as "jural entities" under West Virginia law. See *Milam* v. *Settle,* 127 W.Va. 271, 32 S.E. (2d) 269. Petitioners voluntarily entered an order dismissing the Unions as such and were permitted to file an amended complaint substituting for the Unions as defendants therein named individual district and local union officers and committeemen. The averments of the amended complaint were, in all respects, substantially the same as the original complaint except for appropriate deletion of the Unions and substitution in lieu thereof the individual union representatives. Company was re-

tained as a defendant and charged precisely as in the original complaint.

To the amended complaint, Company filed an amended answer incorporating the provisions of its original answer and also a motion to dismiss. Motions to dismiss were also filed on behalf of four of the five individually named union representative defendants. (The fifth individually named union defendant made no appearance in the State Court.) Generally, the motions to dismiss raised the issues of failure of the amended complaint to state a claim, jurisdiction over the subject matter and/or the parties, and failure of the amended complaint to allege circumstances constituting the alleged fraud with particularity. Legal memoranda were filed by the defendants in support of the motions to dismiss and by the petitioners in opposition thereto.

On March 8, 1965, the State Court entered an order sustaining the motions to dismiss filed on behalf of the Company and the individually named Union representatives and dismissed the action as to all defendants. (P.App. C, page App. 42) No findings or conclusions were made nor was a written opinion filed by the State Court.

Thereafter, on May 11, 1965, the petitioners petitioned the Supreme Court of Appeals of West Virginia[5] for an appeal from the order and judgment of the State Court dismissing their action, with the record accompanying the petition and a note of argument in support thereof. On May 24, 1965, the State Supreme Court entered its order refusing petitioners' appeal without assignment of any reason. (Appendix A hereto, infra, page App. 1)[6]

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[5] Hereinafter referred to as the "State Supreme Court."

[6] Petitioners admit attempt to appeal to State Supreme Court in footnote 1, at page 5 of their Petition.

Of vital significance is the fact that no attempt or effort was made by petitioners to bring the adverse judgment of the State Court before the Supreme Court of the United States for review, although petitioners had contended and urged throughout the State Court proceedings that their cause of action was grounded upon a federal statute—Section 301(a) of the Labor Management Relation Act of 1947; 29 U.S.C.A. 185(a)—and that state and federal courts have concurrent jurisdiction.

II. WITH REFERENCE TO PETITIONERS' INSTANT ACTION IN FEDERAL COURT

Instead of seeking review of the State Court proceedings by petition for certiorari in the Supreme Court of the United States, on July 14, 1965, petitioners instituted this action in the United States District Court for the Southern District of West Virginia[7] against the same original defendants named in the State Court proceedings, for the same cause of action, based upon and alleging the same allegations, agreement and contract, and seeking the same relief as in the State Court.[8] Here again, petitioners seek to recover compensatory and punitive damages for their alleged wrongful discharge by the Company in violation of the collective bargaining agreement and for the alleged conspiracy of the Union with the Company in procuring by fraud the decision of the umpire under the greivance procedures sustaining petitioners' discharge (P.App. D, page App. 53, 54) and to vacate and set aside said umpire's decision (P.App. D, page App. 53). Jurisdiction of the District Court was asserted under Chapter 120, Title III, Section 301, 61 Statutes 156; 29 U.S.C.A. 185(a) (P.App. D,

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[7] Hereinafter referred to as the "District Court."

[8] Petitioners admit on page 4 of the Petition that the complaint and amended complaint first filed in the State Court were similar to that filed in this action in the District Court.

page App. 43)—the same federal statute relied upon in the State Court proceedings.

Company filed a motion to dismiss petitioners' original complaint assigning as grounds therefor (1) that the complaint failed to state a claim upon which relief could be granted against the Company, which included failure to allege fraud with sufficient particularity, (2) that Statute of Limitations, and (3) Res Judicata—that the matters asserted in the complaint had previously been finally and judicially settled in the State Court. (C.App. B, page App. 2, 3). The Union defendants also filed motions to dismiss which included the same grounds (Record, pgs. 19-37).

On April 4, 1966, the District Court filed a Memorandum Opinion granting the motions to dismiss. Thereafter, petitioners tendered and moved the District Court for leave to file an amended complaint, which motion all respondents opposed. The District Court on June 27, 1966, finding that the changes in the tendered amended complaint revealed no substantial difference in the basic grievances originally complained of and that the factual allegations to support them were not materially different from those contained in the original complaint, entered an order denying petitioners' motion to amend and dismissing their original complaint with prejudice in accordance with its previously filed Memorandum Opinion.

Petitioners appealed to the Circuit Court of Appeals. The original briefs of the respondents filed in that Court discussed the issue of *res judicata* together with other issues raised in the respective motions to dismiss. However, when counsel appeared for argument, the Circuit Court directed all parties to file supplemental briefs on the issue of *res judicata* alone. On May 15, 1967, the

Circuit Court of Appeals affirmed the District Court's dismissal, holding ". . . that the dismissal by the State Court of plaintiffs' complaint was a judgment on the merits which bars this action against the defendants herein, under the doctrine of *res judicata.*" (P. App. A, pg. App. 40).

ARGUMENT AND AUTHORITIES RELIED UPON

This federal action is brought by the same identical plaintiffs against the same parties defendant, or their privies; for the same cause of action, based upon and alleging the same material facts in their complaints and seeking the same identical relief as petitioners' previous action in the State Court — the initial forum of petitioners' choice. And although federal substantive law was involved, petitioners did not fully exhaust their rights by seeking review in the Supreme Court of the United States when the State Court proceedings were resolved against them.[9] Instead, they abandoned their State Court action and seek here to try *de novo* their cause of action in the Federal Courts. Clearly, the circumstances of this case fall within the doctrine of res judicata.

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[9] Footnote 7 to the Opinion of the Circuit Court of Appeals (p.App.A. pg. App. 20) points out that in actions brought under Section 301(a) of the Labor Management Relations Act of 1947, although both State and Federal Courts have concurrent jurisdiction, federal substantive law is to be applied, citing Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 451, 458, (1957), accord Vaca v. Sipes, 386 U.S. 171, 174, 177 (1967); Dowd Box Co. v. Courtney, 368 U.S. 502 (1962); Humphrey v. Moore, 375 U.S. 335 (1964); Local 174 v. Lucas Flour Co. 369 U.S. 95 (1962); Smith v. Evening News Ass'n, 371 U.S. 195 (1962). Also, that in any suit within the purview of Section 301(a) a party may petition for certiorari to the United States Supreme Court, referring to Local 174 v. Lucas Flour Co., supra, 369 U.S. at 98.

I

THE APPLICATION BY THE FOURTH CIRCUIT COURT OF APPEALS OF THE DOCTRINE OF RES JUDICATA IS IN ACCORDANCE WITH THE PREVAILING GENERAL LAW APPLICABLE IN THE CIRCUMSTANCES.

Petitioners say that the application of res judicata here by the Circuit Court of Appeals is in conflict with the application of the doctrine in other Districts under comparable circumstances. (Petition, pg. 7). This conclusion, it is submitted, is clearly erroneous. Even the authorities cited by petitioners in support of their position are clearly distinguishable from the circumstances of the instant case. They pertain to situations where it cannot be determined by an examination of the record upon what ground the court decided,[10] or where it does not appear on what ground the court decided, and where dismissal could only be sustained on grounds not going to the merits." Such are not applicable to the case at bar. To the contrary, the Circuit Court here did examine the record and it did appear and it accordingly determined that the State Court's decision was on the merits. (P.App.A, pg. App. 38).

(a) *The Rule of Res Adjudicata*[12]

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[10] See Edwards v. Bodkin, 267 F. 1004, and Vol. 1B of Moore's Federal Practice text, at page 8 in the Petition.

[11] See citation by petitioners of Freeman on Judgments, 5th Ed. Sec. 749, and portions of Re-statement of the Law, Judgments, 49C, and 30A Am. Jur. p. 390, at pages 8-9 of Petition.

[12] Note: The Circuit Court in their opinion, while recognizing that federal law would govern where Section 301(a) is concerned, noted there was no apparent conflict or difference in the federal law doctrine with regard to res judicata, the restatement and West Virginia case law. (P.App.A, pg. App. 25, fn. 15) Thus, this discussion contains references to both federal and West Virginia authorities.

Res Adjudicata is a doctrine of sound public policy and purpose. *Saint Lo Construction Company, Inc. v. Koenigsberger,* 84 App. D.C. 319, 174 F.(2d) 25, 10 A.L.R. (2d) 349, 353 (1949). It is an obvious rule of justice, expediency and public tranquility, *30A Am. Jur.* 373, and is founded upon two maxims of the common law; the one that "it is for the public good that there be an end of litigation"; and the other that "a man should not be vexed twice for the same cause". See *Marguerite Coal Co.* v. *Meadow River Lumber Co.,* 98 W.Va. 698, 127 S.E. 644 (1925); also *30A Am. Jur.* 373, 374.

In *Gentry* v. *Farruggia,* 132 W.Va. 809, 811, 53 S.E. (2d) 741, 742, it is said:

> " 'Briefly stated, the doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.'
>
> "The doctrine includes issues of law and fact that actually were raised and decided in the former case and also such questions as, under certain circumstances, could have been decided there. The principle is based upon a recognized public policy to quiet litigation. It is not rigidly enforced where to do so would plainly defeat the ends of justice."

In *Graves* v. *Associated Transport, Inc.,* (1965) 344 Fed. (2d) 894, at page 901, the Circuit Court of Appeals for the Fourth Circuit said:

> ". . . the concept of priority in time is necessarily inherent in the basic idea of res judicata, which, after all, simply means that, the issue having already been decided once by a court of competent jurisdiction, it should not be litigated a second time."

"Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. The doctrine of res judicata reflects the refusal of the law to tolerate needless litigation. Litigation is needless, if, by fair process, a controversy has once gone through the courts to conclusion." *Angel* v. *Bullington,* (1947), 330 U.S. 183, 191, 91 L.Ed. 832, 838, 67 St. Ct. 657.

Justice Frankfurter, speaking for the majority of the Supreme Court in *Angel* v. *Bullington,* supra, at 330 U.S. 189, 191, 91 L.Ed. 832, 837, in passing on the issue of whether or not the state court adjudicated the "merits" of the controversy before it with reference to res judicata stated:

> "It is a misconception of res judicata to assume that the doctrine does not come into operation if a court has not passed on the 'merits' in the sense of the ultimate substantive issues of a litigation. An adjudication declining to reach such ultimate substantive issues may bar a second attempt to reach them in another court of the State. . . .
>
> "The 'merits' of a claim are disposed of when it is refused enforcement."

The West Virginia Supreme Court of Appeals has said, "The concurrence of four things is necessary for the application of the doctrine of res adjudicata: (1) Identity in the thing sued for; (2) identity of the cause of action; (3) identity of persons, and of the parties to the action;[13] (4) identity of the quality in the persons for or against whom the claim is made." *Carper* v. *Montgomery Ward & Co.,* 23 W.Va. 177, 13 S.E.(2d) 643, 645, (1941), citing *Marguerite Coal Co.* v. *Meadow River Lumber Co.,* supra; *Collins* v. *Treat,* 108 W.Va.

[13] It is well established that this requirement means "parties and those who are in privity with them." *30A Am. Jur.* 374; *8 Michie's Jur.* 591, and cases cited therein.

443, 451, 152 S.E. 205. Without question, the facts of this case meet every requirement of the rule.

Furthermore, when the aforementioned requirements are met, an adjudication bars future litigation between the same parties or their privies, not only as to all issues actually raised and decided but also as to those which could have been raised. *Angel* v. *Bullington*, supra.

(b) *Issue of Res Judicata Was Properly Before The Court*

Company submits that the question of res judicata was properly before the Court for determination, although petitioners question its propriety and assert that the same should have been raised by affirmative responsive pleadings. *Moore's Federal Practice*, 2d Ed., Vol. 1B, p. 951, states that the defense of res adjudicata can be raised by motion and says at page 952, "under the 1946 Amendment to Rule 12(b), res adjudicata may also be raised by a motion to dismiss for failure to state a claim since the Court may treat such motion as a motion for summary judgment." Also, in *Barron & Holtzoff*, Fed. Prac. & Proc., Vol. 1A, at page 333, in discussing motions to dismiss, it is said "Res judicata or complete prior adjudication of the issue in state courts is a good ground for dismissal. . ." Here, both the Company and Unions have filed dismissal motions including as grounds: (1) failure to state a claim and (2) res adjudicata.[14]

Thus, it is urged that the issue was properly before the Court.

(c) *Written Opinion of State Court not Necessary for Res Judicata*

Great weight and consequence is given by petitioners in their brief to the fact that no detailed written opinion

[14] See Company's Motion to dismiss, Appendix B to this brief, pg. App. 2.

was filed by the State Court, and that it simply entered judgment. However, *a written opinion filed by the former court in support of its ruling is not necessary or required for the rules of res adjudicata to apply. Napa Valley Electric Co.* v. *Railroad Comm.*, 251 U.S. 366, 373, 64 L.Ed. 310, 40 S.Ct. 174 (1920); *Saint Lo Construction Company, Inc.*, v. *Koenigsberger*, supra. Headnote 2 of the *Saint Lo Construction Company, Inc.*, v. *Koenigsberger* case, supra, decided in the United States Court of Appeals for the District of Columbia, reads:

> "A trial court's judgment is nonetheless res judicata of issues involved because rendered without a statement of findings of fact and conclusions of law."

Judge Prettyman, speaking for the Court, in the *Saint Lo* case, in 10 A.L.R. (2d) 349, at page 352, stated:

> "In the prior proceeding, the trial court made no findings or conclusions but simply entered judgment. But the doctrine of res adjudicata antedates the time when courts began to state the findings of fact and conclusions of law . . . *It cannot be held that unless a judgment recites the several determinations of fact upon which it is premised, it is not res judicata of the issues in the case.* (Emphasis ours)

II

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS PLAINLY RIGHT AND JUST, AND REACHED IN ACCORDANCE WITH ACCEPTED PROCEDURE.

Petitioners contend (Petition, page 11) that the Circuit Court of Appeals' decision is plainly wrong and manifestly unjust and that the technique of decision is a substantial departure from accepted procedure. This is not true. On the contrary, a review of the Circuit

Court's opinion (P.App. A, pg. App. 15-40) plainly reveals that the court carefully, logically and thoroughly considered this case in accordance with accepted procedure and its well-reasoned decision is plainly right and just.

Petitioners recognize that their cause of action for alleged violation of the collective bargaining agreement was one over which state and federal courts had concurrent jurisdiction (Petition, page 11). The law is well settled in this regard and was so established on March 8, 1965, at the time of the entry of the order dismissing petitioners' complaint in the State Court.[15] However, petitioners' counsel then asserts that "Petitioners therefore had the right to *first* seek their remedy in the state court." (Petition, page 11) (Emphasis supplied) This is correct. But having made their election and first chosen to seek their remedy in the State Court, they should have fully exhausted their rights there. When the issues in the State Court were resolved against them, they should have sought review in this Honorable Court as they had the right to do. This they failed to do and they should not now be permitted to be heard again from the beginning in the federal court as they seek to do in the instant action.

Petitioners' counsel further urges that because he requested the State Court to rule upon jurisdiction distinctly and separately, and the court dismissed without a written opinion that such ruling was on the question of jurisdiction. As heretofore noted, a written opinion is not required. This conclusion is without merit. The Circuit Court discusses in detail each ground of the

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[15] The Circuit Court specifically noted this in their opinion (P.App. A, pg. App. 36), citing Humphrey v. Moore, 375 U.S. 335 (1964); Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962); Dowd Box Co. v. Courtney, 368 U.S. 502 (1962).

motions in the State Court (P.App. A, pgs. App. 26-38), and it is apparent that it thoroughly considered whether or not the State Court's dismissal was on the basis of jurisdiction. In its opinion it specifically says:

> "We do not believe that the State Court dismissed plaintiffs' complaint on the ground that exclusive jurisdiction over such actions lay in the federal courts. At the time of the entry of the order dismissing that complaint, on March 8, 1965, the law was well settled that the jurisdiction of state and federal courts over causes of action cognizable under section 301(a) was concurrent. Humphrey v. Moore, 375 U.S. 335 (1964); Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962); Dowd Box Co. v. Courtney, 368 U.S. 502 (1962)." (P.App. A, pg. App. 36)

The Circuit Court of Appeals had before it the brief of the petitioners together with their petition for appeal to the State Supreme Court, and note of argument filed therewith. These plainly show that both state courts were well informed on *Humphrey* v. *Moore*, 375 U.S. 335 (1964), *Local 174* v. *Lucas Flour Co.*, 369 U.S. 95 (1962) and *Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), and the law concerning concurrent jurisdiction.

III

THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS APPLYING THE DOCTRINE OF RES JUDICATA DOES NOT PREVENT ADJUDICATION OF IMPORTANT ISSUE IN THE REALM OF LABOR RELATIONS.

Petitioners further contend that an important issue in the realm of labor relations is being prevented from adjudication, i.e. whether an arbitrator's award allegedly induced by fraud, threats or collusion may be directly attacked (Petition, page 12). This issue has been decided in West Virginia in the affirmative as the Circuit

Court pointed out and discussed in its opinion. (P.App., pgs. App. 28-31 and 32) *Pettus* v. *Olga Coal Co.*, 137 W.Va. 492, 72 S.E. (2d) 881 (1952); *Dickinson* v. *C. & O. R. R. Co.*, 7 W.Va. 390, 429-430 (1874). Furthermore, this issue was directly involved in petitioners' original action in the State Court and could have been presented to this Honorable Court on a full record had the petitioners sought review by certiorari from the refusal of an appeal to them by the State Supreme Court. They, however, elected to abandon that suit and institute this action to litigate their claim anew in Federal Court. They cannot now complain of the lack of opportunity to have a second adjudication of the same issue.

CONCLUSION

Petitioners, in accordance with the collective bargaining agreement mentioned in the complaint, submitted their grievances of discharge to arbitration. At the fifth stage, the umpire decided against them.

Faced with the adverse decision, the petitioners sought relief in a court. They *voluntarily* chose the State Court. The federal court was open to them at the time. The complaint filed in the State Court embodied the same basic allegations as the complaints filed in federal court. Respondents filed motions to dismiss and the motion was granted. The State trial judge did not assign reasons for his ruling, but this is not necessary to determine res judicata. The State judge necessarily made determinations on the merits of the issues in reaching his decision. The motion to dismiss sustained by the lower State Court was not disturbed by the West Virginia Supreme Court. Petitioners failed to seek a review of the denial of their federal right by the State Court in the Supreme Court of the United States. A determination has been made in a court of plaintiffs' choice; this is res judicata.

The petitioners have had their day in court and the matters asserted in the pleadings here have previously been authoritatively, finally and judicially settled by the judgment heretofore entered in favor of the respondents in the State Court.

For the reasons herein set forth, the respondent Company respectfully submits that the application of the doctrine of res judicata by the Circuit Court of Appeals was correct and proper. Therefore, the petition for a writ of certiorari should be denied.

November 7, 1967

Respectfully submitted,

HARRY G. CAMPER, JR.
Attorney for Respondent
Consolidation Coal Company,
a corporation

BAILEY, WORRELL,
CAMPER & VIERS
Attorneys at Law
First National Bank Building
Welch, West Virginia

JOHN W. GILLESPIE
Attorney at Law
Tazewell, Virginia

Attorneys for Respondent
Consolidation Coal Company,
a corporation